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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 3

[Docket No. DHS-2009-0009]

RIN 1601-AA56

Petitions for Rulemaking, Amendment, or Repeal

AGENCY: Office of the Secretary, DHS.

ACTION: Final rule.

SUMMARY: Pursuant to the Administrative Procedure Act, the Department of Homeland Security (DHS or Department) is adopting a process under which interested persons may petition the Department to issue, amend, or repeal a rule.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Danny Fischler, Office of the General Counsel, U.S. Department of Homeland Security, 202-282-9822.

SUPPLEMENTARY INFORMATION:

I. Background and Response to Comment

The Administrative Procedure Act (APA) requires that each agency give interested persons the right to petition the agency for the issuance, amendment, or repeal of a rule. 5 U.S.C. 553(e). Such a petition is known as a “rulemaking petition.” On July 21, 2016, DHS published an interim final rule describing its procedures for receiving and

responding to rulemaking petitions.¹ 81 FR 47285. The interim final rule set forth specific formatting requirements, including a requirement to prominently mark a rulemaking petition as such; identified the only two mailing addresses at which DHS will accept rulemaking petitions; provided guidelines for the content of rulemaking petitions; and described the process by which DHS will respond to rulemaking petitions. DHS welcomed public comments on the interim final rule until September 19, 2016. DHS received two timely-filed public comments, only one of which was within the scope of the rulemaking.

The one in-scope comment stated general support for the interim final rule, but requested that DHS allow petitioners to submit rulemaking petitions online in addition to by physical mail. The commenter stated that online communication is more efficient. DHS agrees that in certain contexts online communication is more efficient than physical mail, but has decided to retain the requirement to submit rulemaking petitions by physical mail. In this context, DHS believes that physical mail is a more effective and appropriate means of submission to the agency. A properly filed rulemaking petition is a legal document giving rise to specific legal obligations on the part of the agency. See 5 U.S.C. 553(e), 555(e), 702, 706. DHS believes a more formal means of communication is therefore appropriate. In addition, DHS believes that physical mail imposes a minimal additional burden as compared to online communication.

¹ As explained in the preamble to the interim final rule, two components of DHS have component-specific regulations governing rulemaking petitions. See 33 CFR 1.05-20 (U.S. Coast Guard); 44 CFR 1.17, 1.18 (Federal Emergency Management Agency). The interim final rule left those regulations in place. This rule continues to leave those regulations in place.

DHS has determined that no changes to the interim final rule are necessary.

Accordingly, this rule finalizes the interim final rule without change.²

II. Regulatory Analyses

A. Administrative Procedure Act

This rule, like the interim final rule that preceded it, is a rule of agency organization, procedure, or practice under the Administrative Procedure Act, 5 U.S.C. 553(b)(A). Although the Administrative Procedure Act did not require DHS to provide a period of advance notice and opportunity for public comment, DHS invited public comment on the interim final rule, and has responded to such comment in this final rule.

B. Executive Order 12866 Assessment (Regulatory Planning and Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action for the purposes of Executive Order 12866, as amended, and therefore review by the Office of Management and Budget is not necessary.

This rule describes how to petition DHS to issue, amend, or repeal a rule. The rule's qualitative benefits include additional transparency and accountability for the public. The rule imposes no additional costs on the public or the government.

C. Regulatory Flexibility Act

² DHS incorporates by reference the statement of basis and purpose accompanying the proposed rule. 81 FR 47285-47286.

This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

D. Paperwork Reduction Act

This rule does not contain or modify any collections of information under the Paperwork Reduction Act. See 44 U.S.C. 3501 et seq.

List of Subjects in 6 CFR Part 3

Administrative practice and procedure.

For the reasons set forth in the preamble, the interim final rule adding 6 CFR part 3, which was published at 81 FR 47285 on July 21, 2016, is adopted as a final rule without change.

Jeh Charles Johnson,
Secretary.

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